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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 616

DUNCAN MILLER,

Petitioner,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit affirming two judgments of the District Court.

Opinions Below

The opinion of the Court of Appeals has not yet been reported and is set forth in the Appendix at pp. 18-19. The District Court filed no opinion. Its judgments are set forth at pp. 21-22 of the Appendix.

Jurisdiction

The judgment of the Court of Appeals was entered July 26, 1962. A Petition for Rehearing was filed August 10, 1962, and said petition was denied September 17, 1962.

Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

The Court of Appeals found that, as a result of the regulations in effect and the practice of the several lessees whose leases were challenged, other potential applicants were effectively prevented from receiving notice that the leases were open to public offering. The Court, however, in spite of this finding, held that the Secretary of the Interior and these lessees fully complied with the letter of the regulations and the statute and that the leases were issued to qualified persons. The questions presented are:

1. Whether the Court of Appeals applied the proper standards of statutory construction and properly construed the term "qualified to hold a lease" [30 U.S.C. 226] when it addressed itself solely to the letter of the statute and did not interpret such term in the light of other provisions of the statute and its purpose.

2. Whether the Court of Appeals properly departed from its previous position set forth in *McKay* v. *Wahlenmaier*, 96 U.S. App. D.C. 313, 226 F. 2d 35 (1955) that the Secretary of the Interior has a right to cancel a lease improvidently issued to a disqualified applicant to the prejudice of the rights of others, whether or not there is involved a violation of some provision of the statute or regulation, when the Court concluded it was bound to uphold the Secretary of the Interior since it found that the letter of the regulations and statute had been complied with, even though the Court also found that the practice of the lessees had prejudiced the rights of other applicants.

3. Whether the Court of Appeals could uphold the grant of leases issued as a result of a practice that denied other potential applicants notice that would

have permitted them the opportunity to apply for such leases.

Statutes and Regulations Involved

Section 17 of the Mineral Leasing Act of 1920, 41 Stat. 437, 443, as amended by the Acts of August 8, 1946, 60 Stat. 950, 951 and July 29, 1954, 68 Stat. 583, 584, 30 U.S.C. sec. 226, read in part at the time petitioner made his lease offer as follows:

> "All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits may be leased by the Secretary of the Interior. * * * When the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding. * * * Leases issued under this section shall be for a primary term of five years and shall continue so long thereafter as oil or gas is produced in paying quantities.
>
> . . . . . .
>
> "Upon the expiration of the initial five-year term of any noncompetitive lease maintained in accordance with applicable statutory requirements and regulations, the record titleholder thereof shall be entitled to a single extension of the lease, unless then otherwise provided by law, for such lands covered by it as are not on the expiration date of the lease withdrawn from leasing under this section. * * * A noncompetitive lease, as to lands not within the known geologic structure of a producing oil or gas field, shall be extended for a period of five years and so long thereafter as oil or

gas is produced in paying quantities. A noncompetitive lease, as to lands within the known geologic structure of a producing oil or gas field, shall be extended for a period of two years and so long thereafter as oil or gas is produced in paying quantities. * * *"

Section 17 was amended again by the Mineral Leasing Act Revision of 1960, September 2, 1960, 74 Stat. 781, but there was only one substantial change in the provisions pertinent to this case. Noncompetitive leases now simply have a primary term of ten years, and the five-year extension is no longer available. This pertinent change reads, in part, as follows:

"Competitive leases issued under this section shall be for a primary term of five years and noncompetitive leases for a primary term of ten years. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities. * * *"

Section 30(b) of the Mineral Leasing Act of 1920, added by the Act of August 8, 1946, 60 Stat. 950, 956, 30 U.S.C. sec. 187b, provides in part:

"Notwithstanding any provision to the contrary in section 30 hereof, a lessee may at any time make and file in the appropriate land office a written relinquishment of all rights under any oil or gas lease issued under the authority of this Act or of any legal subdivision of the area included within any such lease. Such relinquishment shall be effective as of the date of its filing * * *"

Part 192 of Title 43 of the Code of Federal Regulations sets forth the regulations pertaining to oil and gas leases.

43 C.F.R. 192.43 (1954 ed.) at the time of petitioner's lease offers provided:

> "§ 192.43. *Opening of lands to further filings, where a noncompetitive oil and gas lease is canceled or relinquished.* Where a noncompetitive lease is canceled or relinquished and the lands involved are not on the known geologic structure of a producing oil or gas field or are not withdrawn from further leasing, immediately upon the notation of the cancelation or relinquishment on the tract book of the land office or on the tract book of the Bureau of Land Management, if there is no land office for the State, the lands shall be open to further oil and gas lease offers. Offers received in the same mail or over the counter at the same time, will be considered simultaneously filed and priority to the extent of the conflicts between them will be determined by a public drawing in accordance with the procedure prescribed in § 295.8 of this chapter."

It was amended on December 8, 1959, 24 Fed. Reg. 9846, and now reads in pertinent part as follows (see 43 C.F.R. 192.43, 1961 Supp.):

> "(a) Lands in cancelled or relinquished leases or in leases which terminate by operation of law for nonpayment of rental pursuant to 30 U.S.C. sec. 188, which are not withdrawn from leasing nor on a known geological structure of a producing oil and gas field shall be subject to the filing of new lease offers only after notation on the official record of the cancellation, relinquishment, or termination of such lease and only in accordance with the provisions of this section. All lands covered by leases which expire by operation of law at the end of their primary or extended terms shall

likewise be subject to the filing of new lease offers only in accordance with the provisions of this section except that notation of such expiration of the leases need not be made on the official records.

"(b) On the third Monday of each month or the first working day thereafter if the land office is not officially open for business on the third Monday, the authorized officer of the Bureau of Land Management will post on the bulletin board in each land office a list by subdivision, section, township and range if surveyed or officially protracted, or, if unsurveyed, by the metes and bounds description of the lands in leases which expired, were cancelled, relinquished in whole or in part, or terminated and which will become subject to leasing at 10 o'clock a.m. on the fifth working day thereafter together with a notice stating that the lands in such leases are subject to simultaneous filings of lease offers from the time of such posting until 10 o'clock a.m. on the said fifth working day thereafter.

. . . . . .

"(d) If more than one offer to lease all or any part of the acreage covered by an expired, cancelled, relinquished, or terminated lease is filed during the period provided for in paragraph (b) of this section, their priorities will be determined by a public drawing in accordance with § 295.8 of this chapter."

Statement of the Case

Petitioner applied for noncompetitive oil and gas leases in the Public Domain. Each of petitioner's lease offers was rejected on the ground that another applicant had applied for a lease on the land prior to petitioner, and that petitioner was not therefore the first qualified applicant (R. pp. 6, 10, 15).

In each case, the successful applicant who was preferred to petitioner was a person who (a) had previously held a lease on the land applied for, (b) had relinquished the lease, and (c) had then filed a new application for a lease on the same land within minutes after the land office was first open to the public after the relinquishment of the lease (Appendix, p. 19).[1]

The public notice of the lease relinquishments was made by notations on the tract books in the land offices at a time when the tract books were closed to the public, and the lands did not become available for new lease offers until such notations were made (Appendix, p. 19). Thus, when the land offices opened on the morning following the notation of the relinquishment, the relinquishing prior lessees were necessarily the first persons who could apply for a lease.

The Secretary of the Interior upheld the grant of the leases to the relinquishing prior lessees and the denial of such leases to petitioner. The Secretary recognized that there was some merit to petitioner's "judgment on public policy" that this practice would result in "monopolistic control of mineral land" (R. 14). The Secretary concluded, however, that there was nothing in the statute and regulations that disqualifies a relinquishing lessee from leasing the same lands again (R. 15).

petitioner to have been the first qualified applicant. In

Petitioner then brought action in the District Court, asking that the Court set aside the decisions of the Secretary of the Interior, order cancellation of all leases awarded to the relinquishing leassees or agents thereof, and award petitioner such lease in each case that the Court finds

[1] Petitioner's suit in the District Court originally included certain cases in which it was alleged that the successful applicant was the agent or alter ego of the relinquishing lessee, rather than the relinquishing lessee himself. These cases were removed by stipulation from the case (R., pp. 27-28), so that all the cases considered by the Court of Appeals involved relinquishing lessees.

his Complaint, petitioner alleged that the relinquishing lessees or their agents were not "qualified" applicants within the meaning of the Mineral Leasing Act, and that petitioner was denied a fair opportunity to acquire the leases (R. 4, 5). Later, by stipulation of his counsel, petitioner withdrew his claim to certain of the leases and limited his action to those cases where the successful offeror was the relinquishing lessee and there were no simultaneous filings of new offers after the notice of the relinquishment (Paragraph 2 of the Stipulation, R. 26).

Cross-motions for summary judgment were made, and the District Court entered judgment for the Secretary of the Interior (R. 36). An appeal was taken from this judgment (R. 40).

Thereafter, petitioner *pro se* filed a motion, under Rule 60(b), to set aside Paragraph 2 of the Stipulation that had been made by his counsel. The District Court denied this motion (R. 51). A separate appeal was taken from this order (R. 52).

By order of the Court of Appeals, the two appeals were consolidated.

On appeal to the Court of Appeals, petitioner urged that:

> 1. That petitioner was denied an effective opportunity to acquire the leases denied him and that the Secretary's action was improper, arbitrary and capricious.
>
> 2. The applicants who had been granted the leases in preference to petitioner were not "qualified" applicants within the meaning of the Mineral Leasing Act.[2]

---

[2] Petitioner also argued that the District Court improperly denied petitioner's motion, under Rule 60(b), to set aside the Stipulation. Since this issue does not present a substantial federal question, petitioner has not argued the issue in the petition herein. In the event that the petition is granted, petitioner reserves the right to argue this point.

The Court of Appeals affirmed in a decision rendered by only two Judges, one Judge not participating in the decision. In its decision, the Court of Appeals set forth the process by which the relinquishing lessees were able to obtain new leases from the Department of the Interior, and found that "other potential applicants for the leases were thus effectively prevented from receiving notice that the leases were again open to public offering." (Appendix, p. 19.) The Court held, however, that the Secretary of the Interior and the lessees fully complied with the letter of the regulations and the statute and that the leases were issued to qualified persons first making application for them (Appendix, p. 19).

Reasons for Granting the Writ

Congress has established a well-developed structure to provide for the leasing of noncompetitive oil and gas lands in the Public Domain. The fundamental purpose for granting such leases is to promote the discovery and production of oil and gas and, thereby, increase our natural resources and provide revenue to the United States Treasury and the States through royalties. *California Company v. Udall*, 111 U.S. App. D.C. 262, 296 F. 2d 384, 388 (1961). The method by which Congress has sought to give effect to this purpose has been to restrict the period a lessee can hold a lease to a ten-year period with the further right to hold a lease beyond the ten-year period only so long as oil or gas is produced in paying quantities. Section 17 of the Mineral Leasing Act, 30 U.S.C. 226, *supra*, p.

In this case, a number of lessees were able to avoid the requirement that the produce oil or gas in order to hold their leases beyond the ten-year period. They accomplished this by employing the scheme of relinquishing the leases they held on the lands and, then, reapplying for a new lease in the same land.

The Court of Appeals found that the process employed by these lessees effectively prevented other applicants from receiving notice that the lands were again open to public offering (Appendix, p. 19). As a result, these lessees were necessarily the first applicants, and obtained additional ten-year leases on the same land without producing oil or gas, as required by the other provisions of the statute. In this way, these lessees were able to subvert the basic purpose of the Act.

In spite of this, the Court of Appeals held that the lessees were qualified persons and that they and the Secretary fully complied with the *letter* of the regulations and statute (Appendix, p. 19).

The decision of the Court of Appeals thus poses the question whether the Court properly construed the term "qualified to hold a lease under said sections" as used in Section 17 of the Act. More particularly, the question is whether it was sufficient for the Court to address itself merely to the "letter of the statute", or whether the Court had the obligation to construe the term "qualified to hold a lease under said sections" together with the other provisions of the statute, which restrict the time a person can hold a lease absent production of oil or gas, so as to give the most harmonious and comprehensive meaning possible to the statute as a whole and to effectuate the basic purpose of the statute. *Church of Holy Trinity* v. *United States*, 143 U.S. 458 (1891); *United States* v. *American Trucking Associations*, 310 U.S. 534, 543 (1940); *Markham* v. *Cabell*, 326 U.S. 404, 409 (1945); *Clark* v. *Uebersee Finanz-Korp.*, 332 U.S. 480, 488, 489 (1947); *National Labor Relations Board* v. *Lion Oil Co.*, 352 U.S. 282, 288 (1957).

The term "qualified to hold a lease under said sections", is the most important term in the entire fabric of the Mineral Leasing Act, as it concerns the granting of non-

competitive oil and gas leases. The Court below had, for the first time, the opportunity to define this term in light of the basic purpose of the statute. Rather than choose an interpretation that would give effect to the basic purpose of the Act, it chose a literal reading of the Act, which has resulted in the emasculation of the heart of the Act. *Cf.* Markham v. Cabell, *supra*. This decision will, therefore, restrict the Secretary of the Interior, as well as the courts when they are faced, in the future, with other cases involving the meaning of this critical term. More basically, the Court of Appeals has now determined that the Secretary of the Interior should follow the "letter of the statute", rather than the purpose and spirt of the statute. As a result, the mischief of this decision will recur throughout the administration of the Mineral Leasing Act.

II

The ramifications of this decision extend to other fields of administrative law. The concept of qualification as a requirement to receive a license is significantly present in a number of statutes. This, for example, the Natural Gas Act authorizes the issuance of a certificate to engage in the transportation or sale of natural gas to "any qualified applicant". Sec. 7(f), 15 U.S.C. 717f(e) (1958 ed.); the Atomic Energy Act authorizes the issuance of a license for the possession of, to make available for the period of the license, and to distribute special nuclear material to "qualified applicants", Sec. 53(a), 42 U.S.C. 2073(a) (1958 ed.); the Interstate Commerce Act authorizes the issuance of a certificate of the operation of a common-carrier by motor vehicle to "any qualified applicant", Sec. 207(a), 49 U.S.C. 307(a) (1958 ed.), and the issuance of a motor transportation brokerage license to "any qualified applicant", Sec. 211(b), 49 U.S.C. 311(b) (1958 ed.); and the Communications Act authorizes the issuance of a license for a station

operator to such citizens as the Commission "finds qualified", Sec. 303(b), 47 U.S.C. 303(l) (1958 ed.) and also requires an applicant for a station license or modification or renewal thereof to set forth "other qualifications of the applicant to operate the station", Sec. 308(b), 47 U.S.C. 308(b) (1958 ed.).

This case, therefore, presents a vehicle by which this Court may give other administrative agencies guidelines in the interpretation of the recurring significant term "qualified applicant". If it is merely sufficient to look to the letter of the regulations and statutes, as the Court of Appeals has held, then these other agencies will be restricted in the interpretation of their statutes.

III

In *McKay* v. *Wahlenmaier*, 96 U.S. App. D.C. 313, 226 F.2d 35, 42 (1955), the Court of Appeals stated that the Secretary of the Interior ". . . has the right to cancel a lease improvidently issued to a disqualified applicant, *to the prejudice of the rights of others, whether or not there is involved a violation of some provision of the statute or regulation.* This is particularly true where fraud, deception or concealment caused the lease to be issued."[3] (Emphasis supplied.)

The Court of Appeals herein, in its decision, departed from this statement of law. The Court addressed itself solely to the letter of the statute and regulations and, because of its finding of compliance, held itself bound to uphold the Secretary of the Interior.

However, the finding of the Court that the practice of

[3] The Court of Appeals did not directly state that the practice by which the relinquishing lessees obtained the new leases was a fraud, deception or concealment, but did characterize such practice as a vice (Appendix, p. 19). A reading of the facts as found by the Court shows clearly that such practice as resorted to by the relinquishing lessees, if not constituting fraud, certainly constituted deception.

the relinquishing prior lessees effectively prevented other applicants from receiving notice clearly constitutes prejudice to the rights of others. Yet, the Court did not consider whether, as a result of this finding, the leases were improvidently issued to disqualified applicants.

The issue, therefore, whether the Secretary of the Interior should deny a lease to an applicant who has complied with the letter of the statute and regulations, but has obtained such lease to the prejudice of the rights of others, is an issue worthy of consideration by this Court.

IV

It has been well-settled law that an applicant will not be permitted to hold a lease secured as a result of a procedure by which other applicants were denied an equal opportunity to apply for the lease. *Germania Iron Co. v. James*, 89 Fed. 811 (8th Cir., 1898), *app. dismissed* 195 U.S. 638 (1904); *McKay v. Wahlenmaier*, 96 U.S. App. D.C. 313, 326 F.2d 35 (1955); *Barash v. Seaton*, 103 App. D.C. 159, 256 F.2d 714 (1958). *Wright v. Paige*, 110 U.S. App. D.C. 100, 289 F.2d 766 (1961).

This rule is basic to the integrity of the operation of the Mineral Leasing Act, since, if it were not assiduously applied, the disposition of public lands by the Interior Department would "become naught but privileges dependent upon the gracious favor of its officers", *Germania Iron Co. v. James*, *supra*, at page 818, and persons would unfairly obtain leases to public lands by means of devious schemes or subterfuge, *McKay v. Wahlenmaier*, *supra*, 226 F.2d at page 46.

This decision is the first instance in which a court found that certain applicants had employed a practice that denied other potential applicants an effective opportunity to apply for the leases, and yet the Court permitted those who

had obtained leases as a result of this practice to keep such leases, and denied to petitioner the leases that he was deprived of as a result of such practice.

The decision, thus, not only departs from settled law, but also presents a green light to others to devise other ingenious schemes within "the letter of the regulations and statute" to secure an improper advantage in acquiring leases. The Secretary must be required to demand the utmost integrity on the part of those who apply for leases, and this decision does not do so. *Cf., Knight* v. *United Land Association*, 142 U.S. 161, 181 (1891).

Because petitioner was denied an equal opportunity to acquire leases on public lands, he appealed to the Secretary of the Interior and to the courts. This Court has recognized the value of this policing that is done by those who are financially injured and, thus, often the only ones likely to bring to the attention of the agency errors of law. *Cf., Federal Communications* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 477 (1940). The effect of this decision of the Court of Appeals is not only to deny redress to petitioner for an acknowledged wrong done him—*cf., Stark* v. *Wickard*, 321 U.S. 288, 310 (1944); *United States* v. *Skinner & Eddy Corp.*, 28 F.2d 373, 382 (W.D. Wash., 1928)—but also to seriously limit the only real incentive for the policing of the administration of the Mineral Leasing Act that is done by private individuals.

V

This case assumes increased significance, in view of the fact that this Court has now granted certiorari in *Fenelon B. Boesche, Administrator of the Estate of F. W. Boesche, deceased* v. *Stewart L. Udall, Secretary of the Interior*, No. 332, Supreme Court of the United States, October Term 1962. The *Boesche* Case concerns the question of the authority of the Secretary of the Interior to cancel a lease

in an administrative proceeding." In the Memorandum for Respondent, filed in behalf of the Secretary of the Interior in this case, it was pointed out that, on June 30, 1960, 139,000 outstanding leases were supervised by the Department of the Interior and that, for the three year period ending June 30, 1960, there were 1,129 administrative cancellations out of the total of 54,000 leases issued.

If this Court should determine in the *Boesche* Case that the Secretary has the authority to cancel leases, then the equally important question of what criteria the Secretary should use in determining whether to cancel a lease would be of heightened significance. The Secretary has become more greatly aware of the many frauds that have been committed by applicants in improperly obtaining leases, and he has recently sought to cancel numerous leases obtained by fraud. See: *Pan American Petroleum Corp.* v. *Pierson*, 284 F.2d 649 (10th Cir. 1960), *cert. denied*, 366 U.S. 936 (1961). As has been shown, the decision of the Court herein seriously restricts the authority of the Secretary of the Interior to cancel a lease, and thus this case strongly deserves consideration by this Court.

VI

The significance of this case is not diluted by the fact that at a later date, not pertinent to this case, the Secretary amended the regulation that had been in effect when petitioner's leases were denied. It was not the regulation *per se* that petitioner had attacked but, rather, the manner in which the Secretary had applied it. Although the Court found that the new regulations "assure public notice and fuller public participation in the process of reissuing relinquishing leases" (Appendix, p. 19), the legal issues raised by the decision of the Court of Appeals, that have been presented in this petition, still subsist.

The change in regulation does not affect the more signifi-

cant issue whether a relinquishing lessee who applies for a lease on the same land is a qualified applicant. The issue whether the Court applied the proper standards in interpreting the Mineral Leasing Act and, in particular, the term "qualified to hold a lease under said sections" and the effect of the Court's interpretation on other statutes using a similar term is still present. The issue whether the Secretary of the Interior should deny a lease to an applicant who has complied with the statute and regulations but who obtained his lease to the prejudice of the rights of others is still present. The effect of the decision on the raquirement of equal opportunity to the public to apply for a lease, as well as its effect on the integrity of the administration of the Mineral Leasing Act, is still present. Further, as a result of this decision, a legal wrong has been done to petitioner, and the relinquishing prior lessees have been permitted to retain the leases they acquired as a result of the "vice of the old practice".

Moreover, the history of the administration of the Mineral Leasing Act shows that the Secretary has shifted back and forth in his procedure and regulations with regard to relinquished leases. The regulation now in effect is very similar to the regulations that had been in effect during the years 1940 to 1949. Compare 43 C.F.R. 192.43 [1961 Supp.] (present regulation) with 43 C.F.R. 192.14(a) [1940 Supp.] and 43 C.F.R. 192.14(b) [1943 Cum. Supp.] (regulations in effect, from 1940 to 1949). When the Secretary of the Interior adopted the regulation pertinent to petitioner's case in 1949 43 C.F.R. 192.43 [1954 ed.] and employed it during the period 1949 to 1959, he abandoned the public protection of posting and notice that had previously been in the regulations and are now in the present regulation.

By refusing to set aside the leases issued under the regulation that governed petitioner's case, the Court of Appeals

has given judicial sanction to the manner in which the Secretary applied such regulation. The Secretary, therefore, may, under the decision herein, readopt the old regulation and procedure, if he deems it expedient.

A further reason for granting the writ, therefore, is the necessity of determining whether the prior regulation was properly applied.

Conclusion

For the reasons given above, it is urged that a writ of certiorari should be granted.

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NOVEMBER 16, 1962.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 16373-16374.

DUNCAN MILLER, *Appellant*,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, *Appellee*

Appeals from the United States District Court for the District of Columbia

Decided July 26, 1962

Mr. Chester C. Shore for appellant:

Mr. Hugh Nugent, Attorney, Department of Justice, of the bar of the Supreme Court of Missouri, *pro hac vice*, by special leave of court, with whom *Assistant Attorney General Clark*, *Messrs. Roger P. Marquis* and *Walter H. Williams*, Attorneys, Department of Justice, were on the brief, for appellee. *Mr. S. Ballingsley Hill* and *Robert S. Griswold, Jr.*, Attorneys, Department of Justice, also entered appearances for appellee.

Before WASHINGTON, BASTIAN* and BURGER, *Circuit Judges*.

BURGER, *Circuit Judge*: Summary judgment for the Secretary of the Interior was granted in the District Court in a suit brought by the appellant to cancel certain leases to public lands issued by the Secretary under the Mineral Leasing Act of 1920, 41 Stat. 443, 74 Stat. 781 (1960), 30 U.S.C.A. § 226 (Supp. 1961), and to have new leases for these same lands issued to the appellant.

Appellant himself applied for each of these leases but received none of them, since in each instance it was deter-

* Judge Bastian did not participate in the decision of these cases.

mined that he was not the first qualified person to have entered an application. The applicant to whom the lease was awarded in each instance was the same person who had relinquished the immediately precedent lease before its term had expired. The process by which the relinquishing lessees were able to obtain new leases is here attacked as having denied to other potential applicants a fair opportunity to obtain the benefits of the Mineral Leasing Act.[1]

A careful review of the record makes clear that the Secretary of the Interior and the several lessees whose leases are here challenged fully complied with the letter of these regulations and the statute as they existed at the time, and that the leases were issued to qualified persons first making application for them, consistent with the statutory command.[2] 30 U.S.C. §226 (1958). The judgment and order of the District Court are

Affirmed.

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[1] Under land office regulations in effect during the time of appellant's various applications, when an existing lease was either cancelled or relinquished the land became subject to the filing of new lease offers as soon as the cancellation or relinquishment was noted on the tract book of the United States land office in the particular area. This notation in the tract book always occurred during the hours when the land office was closed to the public, usually between the time the office closed at 3:00 p.m. the day of relinquishment or cancellation and 10:00 a.m. the following morning when the office reopened. Interested parties could not learn of the relinquishment until they had opportunity to examine the tract book. But the relinquishing lessee in each case involved here filed an offer for the relinquished lease within minutes after the land office opened on the morning of or the morning following the tract book notation. Other potential applicants for the leases were thus effectively prevented from receiving notice that the leases were again open to public offering.

The Secretary of the Interior has recognized the vice of the old practice and his regulations have since been amended to assure public notice and fuller public participation in the process of reissuing relinquished leases. 43 C.F.R. 192.43 (Supp. 1961).

[2] The Secretary also urges that the complaint was subject to dismissal because of the absence of the lessees, said to be indispensable parties. We do not reach that question.

Filed July 26, 1962, Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1961

No. 16,373

District Court Civil 346-60

DUNCAN MILLER, *Appellant*,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, *Appellee*

No. 16,374

DUNCAN MILLER, *Appellant*,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, *Appellee*

Appeals from the United States District Court for the District of Columbia.

Before: WASHINGTON, BASTIAN and BURGER, Circuit Judges

JUDGMENT

These cases came to be heard on the record on appeal from the United States District Court for the District of Columbia and were argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgment and order of the District Court appealed from in these cases be, and they are hereby, affirmed.

Per Circuit Judge BURGER.

Dated: July 26, 1962.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 346-60

DUNCAN MILLER, *Plaintiff*,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, *Defendant*

Filed February 23, 1961

JUDGMENT

The Court having determined in its order of February 15, 1961, that there is no genuine issue as to a material fact; and having ordered that the plaintiff's motion for summary judgment be denied and that the defendant's motion for summary judgment be granted,

IT IS ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of the defendant and against the plaintiff and the complaint is dismissed.

Dated this 23rd day of February, 1961.

(signed) LEONARD P. WALSH,
Judge, United States District Court.

Approved as to form:

(signed) MALVERN J. SHEFFIELD, JR.,
Attorney for Plaintiff.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 346-60

DUNCAN MILLER, *Plaintiff*,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, *Defendant*

Filed April 27, 1961

ORDER

This matter comes before the Court on Plaintiff's motion to set aside stipulation. Upon consideration of the motion, and the statement of facts, and the memorandum of points and authorities in support of the motion, together with Defendant's response to Plaintiff's motion, and all papers on file in this action, it is this 27th day of April, 1961,

ORDERED, that the Plaintiff's motion to set aside stipulation is overruled.

(signed) LEONARD P. WALSH,
Judge.

(4900-7)